

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13908, of Northminister Presbyterian Church, Board of Trustees, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.41 to establish a child development center consisting of thirty children and four teachers, part of first floor, in an R-1-B District at the premises 7720 Alaska Avenue, N.W., (Square 2958, Lots 800 and 801).

HEARING DATE: January 26, 1983

DECISION DATE: February 2, 1983

FINDINGS OF FACT:

1. The subject premises, known as 7720 Alaska Avenue, N.W., is located in the upper northwest corner of the District at the intersection of Alaska Avenue, Kalmia Road, and Georgia Avenue, N.W. Specifically, the subject premises is located on the southwest corner of Alaska Avenue, N.W. and Kalmia Road, N.W. The site is in a R-1-B District.

2. The site is improved with a stone church attached to which are two, two-story brick education buildings. The second floor of the older education building, located to the rear of the church, is used by a Korean Social Service Agency which provides assistance to the Korean community in the area.

3. The surrounding area is predominately residential with the exception of the Georgia Avenue C-2-A commercial corridor. West of Georgia Avenue and southwest of Eastern Avenue, the area is zoned R-1-B, and is characterized by single family detached dwelling units. Because the C-2-A zoning of Georgia Avenue includes sites bordering on Alaska Avenue and Kalmia Road, there are commercial uses across the street to the north and east of the church.

4. In BZA Order No. 11647, dated June 24, 1974, the Spring Knolls Cooperative Nursery School applied for and received a special exception to use the first floor of the subject Northminister Presbyterian Church Christian Education Building as a nursery school. The school has since vacated the site.

5. As advertised, the applicant proposed to operate a child development center at the site consisting of thirty children and four teachers. At the Public Hearing the

applicant requested to amend its application to increase the enrollment to fifty children and ten teachers and aides. The applicant testified that the Church was advised that because of the size of the site a large number of children could be accommodated. The Board denied the request to amend since the application was not so advertised and sufficient notice would not have been given to the public. At the time of the public hearing, the opposition sought further clarification of issues from the Board. The opposition noted that the letter of the Zoning Administrator dated November 11, 1982, and the application form dated October 13, 1982, made reference to the applicant's seeking to establish an elementary through junior high school in addition to the subject child development center. The Chair advised the parties that the record evidences that by a telephone call on December 7, 1982, the Church decided to seek only the child development center. The application was so advertised. The child development center is the only issue before the Board in this application.

6. The child development center was proposed to accommodate thirty children ranging in age from under one year to five years. The center would operate Monday through Friday from 6:30 A.M. to 6:30 P.M. The center would provide infant care, preschool and nursery type activities for the children.

7. Paragraph 3101.41 of the Zoning Regulations provides that a child development center is a permitted use in an R-1-B District if approved by the BZA. The Regulations specify that:

- a. The center shall be capable of meeting all applicable code and licensing requirements.
- b. The center shall be so located and designed as to create no objectionable traffic condition and no unsafe condition for picking-up and dropping-off children.
- c. The center shall provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees and visitors.
- d. The center, including any outdoor play space provided, is so located and designed that there will be no objectionable impacts on adjacent or nearby properties due to noise, activity, visual or other objectionable conditions. The Board may require such special treatment in the way of design, screening of buildings, planting and parking areas, signs or other requirements as it shall deem necessary to protect adjacent and nearby properties.

- e. Any off-site play area shall be located so as not to result in endangerment to the individuals in attendance at the center in traveling between such play area and the center itself.
 - f. The Board may approve more than one child development center in a square or within 1,000 feet of another child development center only when the Board finds that the cumulative effect of these facilities will not have an adverse impact on the neighborhood due to traffic, noise operations or other similar factors.
 - g. Before taking final action on an application for such use, the Board shall submit the application to the D. C. Department of Human Services, D. C. Department of Transportation and the D. C. Office of Planning and Development for review and written reports. The referral to the D. C. Department of Human Services shall request advice as to whether the proposed center can meet all licensing requirements set forth in the applicable laws of the District of Columbia.
8. The applicant has initiated the licensing procedure with the Department of Human Services and with the exception of minor changes, the applicant can meet the DHS standards.
9. The applicant proposed to use the public alley located to the rear of the Church as a drop-off/pick-up point. The rear portion of the site is used as a parking lot with seven spaces for the church and church related employees. The church will provide no bus service for the children.
10. Sub-section 7202.1 of the Zoning Regulations requires one parking space for each four teachers and other employees. With four employees, the Northminister Presbyterian Child Development Center is required to provide one space, but a credit for the existing use eliminates this requirement. There is sufficient parking for teachers, staff, and visitors at the rear of the new Christian Education Building where there are seven "stacked" parking spaces. While three of the stacked spaces would block cars to the front and/or side, the working relationship of the individuals utilizing the space should eliminate any problems which might arise from a "stacked" arrangement.
11. The outdoor play space proposed by the church includes a small courtyard located between the Church and the new Christian Education Building and the side yard between the Christian Education Building and the church

owned minister's home. The two play areas combined total 2,514 square feet. The composition of both play areas includes sidewalks, and neither space is of sufficient size and composition to allow free, uninhibited play. Impacts upon neighboring properties would be further minimized by staggered playtime periods so that a minimum number of children would be playing at one time in the yards. The applicant also proposed to use Blair Park as the major play area. Blair Park is located across at least three major streets from the subject site.

12. Both the applicant and the DHS staff indicated that there is no other child development center in Square 2958 or within the immediate area. According to the applicant and the DHS staff, despite need, there is a dearth of child development centers in the upper Northwest area of the District.

13. The Office of Planning, by report dated January 19, 1983, recommended conditional approval of the application. The Office of Planning reported that the center is sufficiently removed from the intersection of Alaska and Georgia Avenues, N.W. that no objectionable or unsafe traffic conditions would be created by the dropping-off and picking-up of children at the front of the Church on Alaska Avenue. In addition, parking restrictions in front of the Church ensured an excellent location for parents to discharge or retrieve their passengers without disrupting traffic or creating traffic hazards. The Office of Planning was of the opinion that use of the rear of the Church as a drop-off/pick-up point should be discouraged. The Office of Planning was further of the opinion that the children's interests would be better served by converting the Church's large grassy side yard which borders Kalmia Road into the play area. With fencing and adequate landscaping, this side yard would provide a healthy, safe play area which would be removed by at least fifty feet from the nearest residential structure. In addition, the OP reported that the use of the side yard along Kalmia Road as the primary recreation area would eliminate reliance upon off-site Blair Park which the applicant indicated would be the major play area for the children. The Office of Planning believed Blair Park, by virtue of its location across Georgia Avenue, is unacceptable as the principal play area. The Office of Planning noted that traveling to Blair Park on foot is too dangerous for small children, especially since it is impossible to reach the park without crossing either Georgia or Eastern Avenues, N. W. In order to walk from the Church to the park, the children would have to cross at least three major streets. While an occasional, well supervised trip to Blair Park would no doubt be a treat for the children enrolled at the center, in terms of safety, the side yard adjacent to Kalmia Road is a much better play area. In summary, the Office of Planning recommended conditional approval of this

application. The Office of Planning believed that with the following conditions, the surrounding residential neighborhood will be adequately protected from noise, traffic, and otherwise objectionable conditions:

- a. Approval shall be for a five year period.
- b. The granting of this special exception shall be limited to a Child Development Center operated by the Northminister Presbyterian Church.
- c. The number of children shall be limited to forty and staff shall be limit to not more than four individuals.
- d. The hours of operation of the center shall be 6:30 A.M. to 6:30 P.M.
- e. Children brought to the site by automobile shall be dropped-off and picked-up at the front entrance of the church.
- f. The recreation periods for children attending the center shall be staggered.
- g. The church shall designate the side yard bordering Kalmia Road, N. W. as the children's play area and shall fence and landscape this yard for safety, visual, and noise reduction purposes.

The Board for reasons discussed below does not concur in the Office of Planning recommendation or some of its reasonings.

14. The Department of Transportation by memorandum dated January 19, 1983, concluded that the subject proposal would have a negligible transportation impact on the neighborhood area. The DOT reported that Alaska Avenue is a principal arterial with a forty foot wide pavement. Parking is prohibited on the west side from 7:00 to 9:30 A.M. and on the east side from 4:00 to 6:30 P.M. Kalmia Road is a minor arterial with a thirty foot wide pavement. Parking is limited to two hours except for the residential permit holders on the north curb and prohibited at all times on the south curb. Twelfth Street is a local two way street. It has a thirty foot wide pavement. Parking is allowed on both sides at all times. The site is served by Metrobus routes S-1, S-2, S-3 and 70, 71, 73 which operate respectively on Alaska and Georgia Avenues. They link the site to the Silver Spring Metrorail Station and to Downtown Washington. The DOT further reported that it did not expect this project to generate traffic which will measurably affect the level of service on the street system. Approximately three to five vehicle trips will be generated during each peak hour for drop-off and pick-up. The DOT noted that the applicant

has parking spaces in the rear of the church. Access to these spaces is via a sixteen foot public alley from both 12th Street and Kalmia Road. The DOT further noted that the Zoning Regulations require only one parking space for this project. The Board, for reasons discussed below, does not concur in the DOT conclusion.

15. The Department of Human Services, by memorandum dated January 24, 1983, reported that when all deficiencies have been corrected, the subject facility can meet all licensing requirements set forth in the Child Development Facilities Regulation 77-34 and D. C. Law 2-98.

16. There was much opposition to the application. Petitions with some 150 signatures from residents of the neighborhood in opposition were filed in the record. The grounds for the opposition were:

- a. The child development center will destabilize the neighborhood and have an adverse effect on the environment for family life.
- b. The center will increase traffic congestion, creating hazards. It will increase noise activity, cause neighborhood flight and adverse safety conditions.
- g. The center will create an attractive nuisance to loiters.
- d. A fence and playground equipment in the side yard on Kalmia Road will destroy the beauty of the church lawn, which is now a lovely entrance into Shepherd Park.

17. Four persons, including the single member district ANC Commissioner, testified at the public hearing in opposition to the application. The opposition argued that there was no safe drop-off/pick-up site for the thirty children. Parking and standing is prohibited on the west side of Alaska Avenue from 7:00 A.M. to 9:30 A.M. This includes the no parking area in front of the Church. Also a few feet away from that section in front of the Church is a bus stop. As to the possibility of the alley being used as a drop-off/pick-up site, the opposition argued that the alley is only sixteen feet wide. Approximately ten residences with frontage on Alaska Avenue, Kalmia Road and 12th Street border on the alley. The alley is used by said residents as access to their rear parking facilities. Other area residents use the alley and it is heavily trafficked. Such a site would be dangerous to children. The alley is the only access to the Center.

18. The opposition submitted photos to the record evidencing illegal parking in the alley on weekdays and Sunday. If the drop-off/pick-up site were located in the alley, it would result in a public alley being converted to a private thoroughfare for the Church. Such a location for thirty children would create noise, traffic congestion and possibly completely block the alley.

19. The opposition argued that the proposed play areas are unsuitable because of their small size. Both play areas include sidewalks. While the players in the courtyard may not be noisy, the grassy area courtyard on the south side is located between the Church building line and a residence and noise can be heard from there. The use of the southwest lawn, bordering Kalmia Road and Alaska Avenue, as a play area proposed by the Office of Planning would be a hazard to the children and the neighborhood, if enclosed by a fence and shrubbery. It would invite an influx of vagrants and derelicts from nearby Eastern Avenue. The shrubbery had recently been removed to eliminate vagrants from sleeping on the lawn. Also, the lawn is now a very attractive view in the neighborhood. Creating a play area thereon would turn the lawn eventually into a dustbowl.

20. The opposition also argued that the Church conducts too many activities, such as a dance school, senior citizen associations, and the Korean social service center. While the opposition has no argument with the activities, it challenged the lack of control the Church exercises. The Church is not a good neighbor with its abuse of neighborhood parking spaces by its parishioners, parking in the public alley, noise and debris in the alley. The also argued that there is no need for the proposed service in the neighborhood. They listed some fifteen schools offering the same or similar programs as the subject school, of which the applicant had little or no knowledge. The proposed facility would not service the community.

21. Advisory Neighborhood Commission 1A made no recommendation on the application.

22. The Board, in addressing the concerns of the opposition, finds that it concurs with the opposition in that the pick-up/drop-off site either in the public alley or on Alaska Avenue creates an unsafe condition for the children. In this respect the Board finds that the evidence of the opposition, based on daily experiences, is more persuasive than that of the Office of Planning, which made but one inspection of the site, and that of the DOT. As to the issue of the proposed play areas, the Board finds that the DHS alone can determine whether the Center has met all the applicable code and licensing requirements. As to the play area site suggested by the Office of Planning, the Board first advises the opposition that there is no scenic

easement over the Church property. Whether vagrants may gather on the lawn is not a zoning issue but rather one of policing through another Government agency, not the BZA. The Board does find that the Center provides sufficient off-street parking spaces for teachers, other employees and visitors. The Board further finds that while it has been alleged that there is no need for the proposed service in the neighborhood because of many such facilities, it would be the function of the DHS to establish how many of the facilities are duly licensed and in what neighborhoods they are in fact located. As to the concern of the opposition over the uncontrolled activities of the Church, it is the Board's opinion that this is a personal matter that should be worked out between the Church and the neighborhood.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a special exception, the granting of which requires proof that the applicant has met the requirements of Paragraph 3101.41 of the Zoning Regulations under which it seeks its relief. The Board concludes that based on the Findings of Fact particularly No. 17 and 22, the applicant has not met the burden of proof. It has failed to comply with Sub-Paragraph 3101.41(b). Both proposals for the picking-up and dropping-off of the children are replete with unsafe conditions. The Board concludes that failure to resolve this issue is dispositive of the application. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 4-0 (Douglas J. Patton, Carrie L. Thornhill, William F. McIntosh and Charles R. Norris to Deny, Walter B. Lewis not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



STEVEN E. SHER

Executive Director

FINAL DATE OF ORDER: _____

JUN 22 1983

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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